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John W. Kure
Executive Director - Federal Regulatory

Qwest

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OCT 26 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ex Parte

October 26, 2000

EX PARTE OR LATE FILED

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: CC Docket Nos. 96-98 and 99-68
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic

Dear Ms. Roman Salas:

On October 25, 2000, the undersigned met with Kyle Dixon, legal advisor to Commissioner Powell and on October 26, 2000, Dr. William Taylor of NERA, Robert McKenna of Qwest and the undersigned met with Anna Gomez, legal advisor to the Chairman; Deena Shetler, legal advisor to Commissioner Tristani; Rebecca Beynon, legal advisor to Commissioner Furchtgott-Roth; and Jordan Goldstein, legal advisor to Commissioner Ness. During these meetings, the views of Dr. Taylor and Qwest on the appropriate intercarrier compensation for ISP-bound traffic were presented. Qwest and Dr. Taylor believe that the appropriate public policy for this traffic between an ILEC and a CLEC is 'bill and keep' as noted on the attached material used during the meetings. Also attached is a copy of the "Efficient Inter-Carrier Compensation for Internet-Bound Traffic: Reply to Time Warner Telecom" written by Dr. Taylor and Dr. Banerjee which also address this subject. In addition, attached are the Arizona and Colorado orders which set 'bill and keep' for ISP-bound traffic.

In accordance with Section 1.1206(b)(2) of the FCC's Rules, an original and two copies of this letter are being filed with your office for inclusion in the public record.

Acknowledgment and date of receipt of this submission are requested. A duplicate of this letter is provided for this purpose. Please call if you have any questions.

Sincerely,

Attachments
cc: Kyle Dixon, Rebecca Beynon, Deena Shetler, Jordan Goldstein, Anna Gomez, Tamara Preiss

Reciprocal Compensation for ISP-Bound Traffic CC Dkt. Nos. 96-98 and 99-68

Ex parte
October 25 and 26, 2000

Robert McKenna and John Kure,
Qwest Corporation

and

Dr. William E. Taylor, Senior Vice President,
National Economic Research Associates, Inc. (NERA)

Bill and Keep is the Appropriate Compensation Paradigm for Internet-Bound Traffic (Dr. Taylor)

- Cost causation is the proper economic basis for selecting the form of compensation for Internet-bound traffic.

- Based on cost causation, Internet-bound traffic resembles long distance traffic more than local voice traffic.

- The cost causer, the ISP's customer for Internet access, and the cost-causer's agent, the ISP itself, should be responsible for compensating both the ILEC and the CLEC.

- Because of the ESP exemption, the next best compensation policy is Bill & Keep.

- Reciprocal compensation at a positive rate for Internet-bound traffic is economically inefficient, distorts local exchange competition, and creates incentives for uneconomic arbitrage.

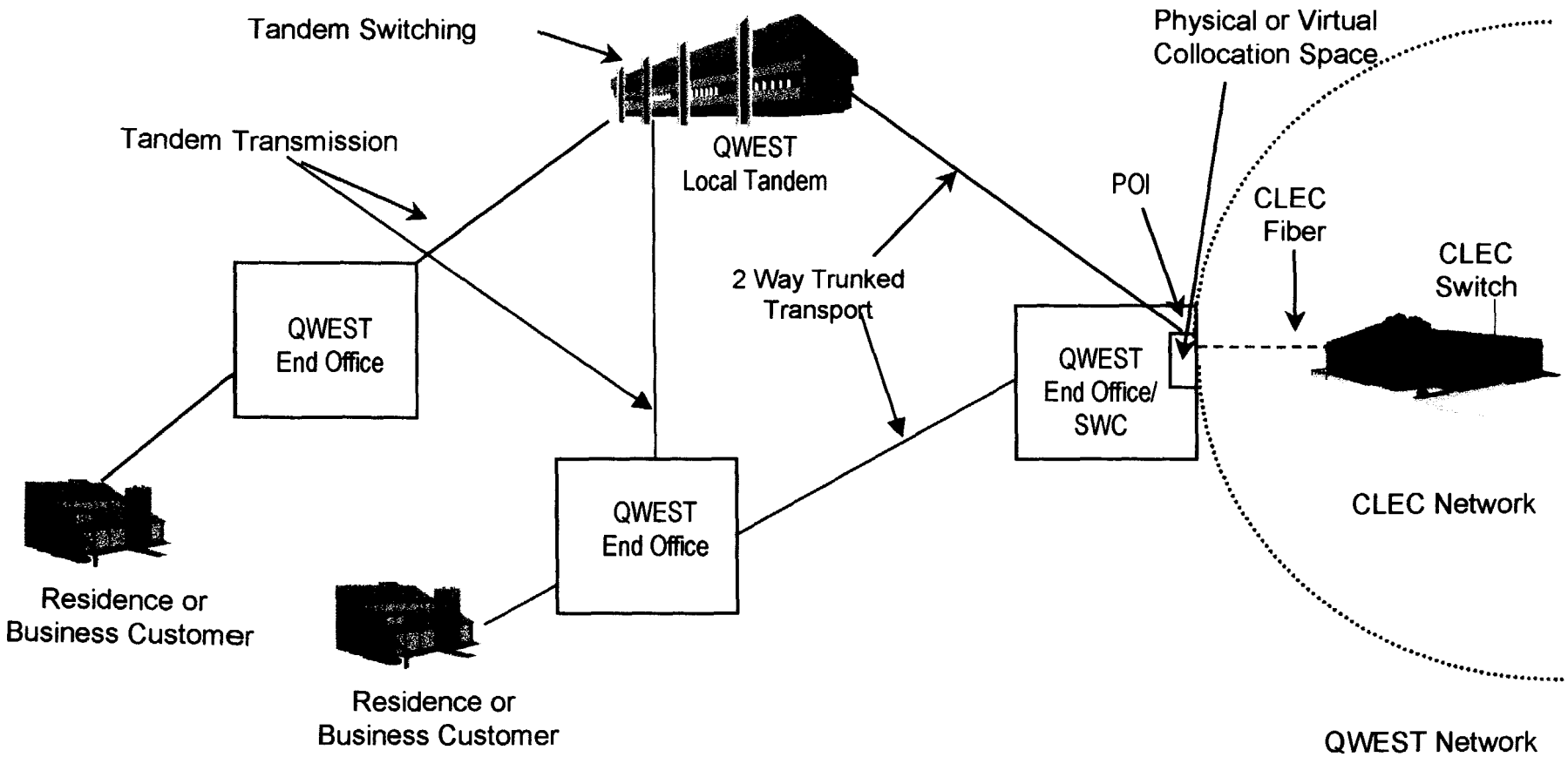
- Current policy of reciprocal compensation at a positive rate should be ended for Internet-bound traffic.

Over time, Qwest's Cost Advocacy for Switching Has Not Changed, in Spite of Increasing Net Reciprocal Compensation Payments to CLECs

State	Filed Study Date	Filed TELRIC + Common Cost	State Ordered Internet Reciprocal Compensation?	Ordered Rate (Arbitrated if no Cost Docket)
• **Oregon**	08/01/1996	$ 0.002880	Yes	$ 0.001330
• **Nebraska**	08/01/1996	$ 0.003082	Yes	$ 0.003682
• **Washington**	08/01/1996	$ 0.002671	Yes	$ 0.001200
• **Montana**	09/01/1996	$ 0.003655	No Decision	$ 0.002900
• **New Mexico**	09/01/1996	$ 0.003013	Yes	$ 0.001108
• **North Dakota**	09/01/1996	$ 0.003302	No	$ 0.002500
• **Utah**			Yes	
– Urban	09/01/1996	$ 0.003298		$ 0.002299
– Suburban	09/01/1996	$ 0.003120		$ 0.002664
– Rural	09/01/1996	$ 0.004013		$ 0.002896
• **Colorado**	11/01/1996	$ 0.003083	No / Eff. May 2000	$ 0.002830
• **Idaho**	01/01/1997	$ 0.003421	No Decision	$ 0.002900
• **Arizona**	02/01/1997	$ 0.002947	No / Eff. June 2000	$ 0.002800
• **Minnesota**	03/01/1997	$ 0.003205	Yes	$ 0.001813
• **Iowa**	07/01/1997	$ 0.003237	No	$ 0.002130
• **Wyoming**	10/12/1998	$ 0.003753	No Decision	$ 0.003753
• **South Dakota**	03/04/1999	$ 0.003469	No	$ 0.003469

- The costs filed by QWEST are not influenced by whether a state orders reciprocal compensation on Internet traffic. Note that filed costs from 8/1/96 through 3/4/99 do not trend up or down over time.

The following diagram illustrates the trunking required to transport calls to a CLEC



ILECs are Incurring Huge Costs to Transport the ISP Traffic to the CLECs

- Since 1997, Qwest has incurred over $275 million in capital costs to install nearly 24,000 DS1 trunks serving CLECs and expects to spend well over $100M per year in the future.
- Qwest will be compensated for only a fraction (approximately one-ninth) of that cost because of the preponderance of ISP traffic going to CLECs.
- In addition to incurring the costs of constructing trunks, ILECs are paying huge amounts in reciprocal compensation to the CLECs.
- In the case where the ISP is connected via the ILEC, the ISP and the end user jointly cover these costs.
- In the case where the ISP is connected "behind" the CLEC, reciprocal compensation applies and the ISP pays nothing to recover these costs. This raises the costs which must ultimately be covered by the ILEC's end user.

Bill & Keep is Appropriate Policy

- Bill & Keep is the appropriate public policy for Internet-bound traffic.
- Transit traffic cannot be subject to Bill & Keep. This is traffic originated by one carrier which transits another carrier's network and terminates to yet another carrier. The carrier in the middle does not have an end-user to "bill" and should be compensated by the originating carrier.

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EFFICIENT INTER-CARRIER COMPENSATION FOR INTERNET-BOUND TRAFFIC:

REPLY TO TIME WARNER TELECOM

William E. Taylor and Aniruddha Banerjee
National Economic Research Associates, Inc.
One Main Street
Cambridge, MA 02142

October 23, 2000

EFFICIENT INTER-CARRIER COMPENSATION FOR INTERNET-BOUND TRAFFIC: REPLY TO TIME WARNER TELECOM

I. INTRODUCTION

1. In an earlier paper, we presented an economic and policy analysis of alternative inter-carrier compensation mechanisms for Internet-bound traffic.[1] We applied economic principles to show that the appropriate form of inter-carrier compensation for such traffic is not reciprocal compensation. The principle of cost causation clearly implies that the customer-supplier relationship for Internet-bound traffic is similar to that for long distance traffic but not for local voice traffic. However, the inter-carrier compensation mechanism for Internet-bound traffic that is analogous to the access charge structure for long distance traffic is precluded by the current FCC exemption from access charges available to all enhanced service providers ("ESPs") including Internet service providers ("ISPs"). Unfortunately, reciprocal compensation for Internet-bound traffic—based on the model of interconnection for traditional local voice traffic—cannot be justified by the cost causation principle, and has several harmful economic effects. These include an inefficient subsidy for Internet use, distortion of local exchange competition, and uneconomic arbitrage opportunities for competitive local exchange carriers ("CLECs") that serve ISPs.

2. In a recent response to a similar paper authored by one of us,[2] Time Warner Telecom disputed many of our key findings and attempted to portray the choice as being solely between access charges and reciprocal compensation.[3] In his comments on behalf of Time

[1] William E. Taylor, Agustin Ros, and Aniruddha Banerjee, "An Economic and Policy Analysis of Efficient Intercarrier Compensation Mechanisms for ISP-Bound Traffic," December 1, 1999.

[2] Declaration of William E. Taylor ("Taylor Declaration"), on behalf of Verizon Communications, in FCC, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996* (CC Docket No. 96-98) and *Inter-Carrier Compensation for ISP-Bound Traffic* (CC Docket No. 99-68).

[3] Reply Comments of Time Warner Telecom and Declaration of Don J. Wood ("Wood Comments") in FCC, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996* (CC Docket No. 96-98) and *Inter-Carrier Compensation for ISP-Bound Traffic* (CC Docket No. 99-68), August 7, 2000.

Warner Telecom, Don J. Wood disagreed with the following three themes in the Taylor Declaration:

1. Cost-causative analysis of Internet-bound calls suggests that reciprocal compensation is inappropriate for such calls.

2. Internet-bound traffic is not as costly for a CLEC to deliver to an ISP as is local voice traffic.

3. Reciprocal compensation for Internet-bound traffic creates perverse incentives for behavior by CLECs and ISPs that harms economic efficiency.

In this paper, we respond to Mr. Wood's disagreement with us on those three themes. Specifically, we stand by our original analysis and demonstrate that Mr. Wood's own analysis is seriously flawed or deficient.

II. COST CAUSATION AND COMPENSATION FOR INTERNET-BOUND CALLS

3. Mr. Wood takes issue with the supposed assertion in the Taylor Declaration that "the flow of cost causation in a local telephone call is dependent in any way on the identity of the calling or called party." [Wood Comments, at 3] In advancing his own proposition that the identity of the calling and called parties do not matter for cost causation, Mr. Wood asserts that there is no real difference in the ultimate *incidence* of the cost of a local voice call, regardless of whether that call originates *and* terminates within the incumbent local exchange carrier's ("ILEC's") network, or originates within the ILEC's network but is handed off (under an interconnection agreement) for termination within a CLEC's network. Mr. Wood reasons that although, in the latter instance, the ILEC would avoid having to perform the termination *function* itself, it would not really avoid the cost of termination because of its interconnection obligation to compensate the CLEC for performing the termination on its behalf. The same logic would apply in reverse for calls made from within the CLEC's network to called parties either within that network or in the ILEC's network. Therefore, in Mr. Wood's view, the compensation liability always remains with the network serving the calling party and the size of the compensation is unchanged by whether the called party is on the same or some other network. According to Mr. Wood, this makes the identities of the calling and called parties and any customer-supplier

relationship irrelevant for determining who should pay whom and how much. [Wood Comments, at 5]

4. Extending his analysis to the case of Internet-bound traffic, Mr. Wood agrees that the ISP customer is the true cost-causer for an Internet-bound call, but disputes our position that the cost arises when the Internet user acts as a customer of the ISP. Instead, Mr. Wood argues, the cost is caused by the Internet user using her ILEC's network to place a call to an ISP that, in turn, provides access to the Internet. [Wood Comments, at 6] From this we surmise Mr. Wood's belief to be that, because the Internet user pays the ILEC to provide the means to contact the ISP, the ISP itself has no role in how or why the cost arises. This is also evident from Mr. Wood's claim that if the contractual relationship were truly between the Internet user and the ISP, then the ILEC would be obliged to disconnect that Internet user's telephone service any time the Internet user "failed to live up to [her] side of the contract and did not pay [her] bills to the ISP." [Wood Comments, at 6] Because this does not happen, Mr. Wood concludes that the contractual relationship relevant for cost causation is that between the Internet user and her ILEC, rather than between the Internet user and the ISP.

5. Mr. Wood also claims that the Taylor Declaration's description of the role of cost causation for Internet-bound calls suffers from the flaw of "under-inclusiveness." [Wood Comments, at 6-7] That is, Mr. Wood faults our alleged failure to consider all forms of commercial relationships that an ILEC subscriber could enter into beside that with an ISP, e.g., with brokerage firms, flower shops, banks with on-line service, pizza parlors, etc. Since Qwest or other ILECs have not argued in favor of eliminating reciprocal compensation for local calls from the ILEC subscriber to these other entities as well, there is an apparent selectivity in our singling out ISPs—and the CLECs that serve them—for denial of reciprocal compensation.

6. We disagree with all of these allegations by Mr. Wood of flaws in the economic logic of our position on cost causation and compensation for Internet-bound calls. The cost causation principle clearly distinguishes inter-carrier compensation for long distance calls from that for local calls and similarly distinguishs between the types of compensation that

are appropriate for local voice calls to end-users and calls to ISPs that provide Internet access functions to Internet users. We also believe that our exclusion of brokerage firms, pizza parlors, and the like from reciprocal compensation arrangements does *not* raise the specter of under-inclusion.

A. Contractual Relationships *Do* Matter for Determining Compensation Policy

7. The cost causation principle asks us to first identify the source of cost and then determine the amount of cost to be recovered. The first priority is, therefore, to locate the cost-causer or, in other words, the economic decision that gave rise to the cost. When an Internet user wishes to reach a web site or other destination on the Internet, she must first secure the services of the entity that is not only in a position to provide the pathway to the Internet but also actively markets those services through advertising and contractual terms and conditions concerning price, scope, quality, etc. The cost of the Internet-bound call—*wherever it may be generated*—would not arise were it not for the promise by the ISP to deliver Internet destinations to the Internet user and that user's voluntary acceptance of the ISP's terms and conditions for granting such access. In the absence of Internet access (i.e., the ISP's service), there would be no Internet-bound calls, and no cost would be caused for such calls. Therefore, the premise of cost causation *does* require us to look at how cost may arise in any instance and the contractual arrangement that governs the economic decision that gives rise to that cost.

8. The same may be observed to be true for other contractual relationships as well: that between the ILEC's subscriber and the ILEC for local voice calling (with the ILEC subscriber acting as a *customer* of the provider of local voice service) or that between the ILEC subscriber and the inter-exchange carrier ("IXC") for long distance calling (with the ILEC subscriber acting as a *customer* of the IXC for long distance service). Of course, the ILEC subscriber would have to use the ILEC's network to reach a CLEC (for cross-network local calls), an IXC (for long distance calls), and an ISP (for Internet calls). That is exactly how all or part of the cost of making those calls would arise in the first place. But, employing the cost causation principle in the manner suggested to determine how or why

cost arises does *not* amount to denying compensation where it is due. Indeed, cost causation helps us to sort through the following questions: (1) why did the cost arise (what economic decision caused the cost)? (2) where did the cost arise (what is the chain of economic activities that followed that decision)? and (3) how should the cost be recovered (how can the cost-causer and her agent be made to compensate all parties that incurred cost as a result of those economic activities)? Contrary to Mr. Wood's suggestion, we submit that the identity of the various parties in the contractual relationship *is* fundamental for determining where compensation is due and from whom.

9. Clearly, the ILEC subscriber must use intermediaries (such as the ILEC's and sometimes a CLEC's network) to reach her agent (an IXC for long distance calls and an ISP for Internet calls). In all instances, those intermediaries, as passive participants in the process, incur costs for which they should be compensated. For long distance calls, the IXC—the cost-causer's agent—compensates the ILEC (or CLEC) for incurring costs at both the originating and terminating ends of those calls *and* recovers that compensation in the long distance service rates it charges its cost-causing customer. The exact same story applies, or should apply, to Internet calls for which the ISP—the cost-causer's agent—must compensate the ILEC (and/or CLEC) for incurring costs to deliver those calls. Analogously to the IXC, the ISP should then recover that compensation in its Internet access service rates to the cost-causing customer. In sharp contrast to Mr. Wood's supposed application of the cost causation principle, this demonstrates why it is important to first establish the identities of the cost-causer, the cost-causer's agent, and other intermediaries who passively incur cost before determining how compensation should be paid and to whom. To do otherwise (as Mr. Wood's analysis suggests) would be to ignore cost causation itself.

B. There is *No* Problem of Under-Inclusion if the Status of Called Parties is Correctly Identified

10. The alleged problem of under-inclusion (or selectivity) in determining compensation policy is entirely a figment of Mr. Wood's own incomplete analysis. Mr. Wood asks why reciprocal compensation should apply to various entities (like brokerage firms, pizza parlors, etc.) with which the ILEC subscriber can have a commercial relationship over the

telephone network but not to CLECs serving ISPs. The obvious answer is that every entity listed by Mr. Wood as the called party is an "end-user" (in the commonly understood sense of the term), but an ISP is not. Local calls made between end-users qualify for reciprocal compensation under state and federal policies, but not so calls from an end-user and a carrier. Our position has consistently been that the ISP performs the economic functions of a carrier, not an end-user or the passive recipient of a call. The ISP maintains a gateway into the circuit-switched network on one side and the packet-switched network on the other and, on occasion, even integrates itself into one or the other network (e.g., when the ISP becomes its own CLEC or owns and operates its own assets in the Internet backbone). The ISP also acts like a carrier by transporting Internet calls, performing protocol conversions, and carrying out other carrier functions. Regulators have also recognized this difference from true end-users, sometimes explicitly.[4]

11. Could the relationship between an ILEC subscriber and a pizza parlor or a bank with on-line service be a commercial contract in the same sense as that between that subscriber and an ISP? The answer is a qualified "yes." Like the ISP, the pizza parlor or the bank offers its services over the telephone (although, unlike the ISP, it also has non-network means for selling its services). However, there are also some important differences. First, the pizza parlor or the bank does not perform the carrier-like functions of an ISP to provide access to some other party (such as a web server or Internet destination). Rather, the pizza parlor and the bank provide internal access into their own operations, in much the same way that *any* end-user may be said to provide "access" to herself when a call comes in. Second, the relationship between the ILEC subscriber and the pizza parlor or bank is truly reciprocal, as it is supposed to be between two end-users. That is, the pizza parlor or bank can

[4] For example, in becoming the fourth state regulatory agency to deny reciprocal compensation for Internet-bound traffic, the Louisiana Public Service Commission stated:

> There is no prevailing industry custom of treating ISP traffic as "local" for reciprocal compensation purposes. FCC regulations require that ISPs be treated as end users *for only one purpose, the access charge exemption.*

Louisiana Public Service Commission, *In re Petition of KMC Telecom, Inc. Against BST to Enforce Reciprocal Compensation Provisions of the Parties' Interconnection Agreement*, Order in Docket No. U23839, October 13, 1999, at 13.

independently call the ILEC subscriber, i.e., on a separate call from that made by that subscriber to the pizza parlor or bank. An ISP, in contrast, serves merely as an Internet access-granting agent to the ILEC subscriber and has no commercial interest in returning separately any calls to that ILEC subscriber. In both of these respects, the role of the ISP is strikingly similar to that of an IXC. Unlike the pizza parlor or bank, an IXC too performs the functions of a carrier and has no commercial interest in returning separately any calls to the ILEC subscriber. These differences bear powerful witness to the fact that mere *resemblance* between cross-network local voice calls and Internet-bound calls (up to the ISP) is not enough for both to merit the same compensation mechanism. Without belaboring the point unnecessarily, cost causation *does* matter.

III. INTERNET-BOUND TRAFFIC MAY NOT BE AS COSTLY AS LOCAL VOICE TRAFFIC

12. Mr. Wood questions the conclusion reached in the Taylor Declaration (and our earlier submission) that the cost per minute of an average-duration Internet-bound call is less than that for an average-duration local voice call. [Wood Comments, at 10-17] First, although he agrees with our position that, under the current rate structure, that difference in cost per minute may be true (because averaging of fixed call set-up costs over longer durations necessarily yields that result), he dismisses any further concern for it by proposing a two-part rate structure that would separate the recovery of the fixed call set-up cost from that of the incremental per-minute cost. Second, he disagrees with the assertion in the Taylor Declaration that line CCS costs for Internet-bound traffic are not traffic-sensitive and should, therefore, be omitted from the calculation of the per-minute incremental cost of carrying such traffic.

13. Even if, for the sake of argument, the per-minute incremental cost were the same for Internet-bound and local voice traffic, the current rate structure adopted for reciprocal compensation *is* a matter of significant concern. While we are encouraged by Mr. Wood's support for a two-part rate structure (to distinguish the recovery of fixed costs from that of incremental costs), we are not optimistic about its prospects for widespread adoption any time soon. We note that the same, more efficient rate structure could equally be proposed

for switched access service (which too incurs fixed and traffic-sensitive or incremental costs) but that, by long-standing tradition, switched access rates have been single-part composites intended to recover both fixed and traffic-sensitive costs. Similarly, the FCC's policy for reciprocal compensation for local voice traffic is based on a single-part rate that applies equally in both directions (i.e., to both the ILEC and the CLEC), *regardless* of any differences in the underlying costs of the two networks to carry local calls. Therefore, as long as that rate structure persists for Internet-bound traffic, the inefficiency and perverse incentives generated by extending to Internet-bound traffic the reciprocal compensation rate designed for local voice traffic will remain a matter of substantial concern.

14. Mr. Wood also misunderstands why certain traffic-sensitive costs do not arise for CLECs that serve ISPs through ISDN Primary Rate Interface ("PRI") facilities. Those ISP-serving CLECs typically build switches at a concentration ratio of 1:1. Therefore, for those carriers, line CCS costs are fixed with respect to usage. Each line serving an ISP has a *dedicated* path through the switch processor and increased usage from other lines does not impact the use of the line serving the ISP. No matter what the demand is from other lines, the path serving the ISP always remains available for customers calling the Internet. Since the circuit is dedicated to the ISP line, the use of the facility does not impose congestion costs on other users and no rationing or call blocking is imposed on the network as a result. Although the same network elements are used for local voice traffic, inter-carrier compensation for Internet-bound traffic should not include line CCS costs because those costs do not vary with additional usage and are, therefore, not incremental costs of delivering Internet-bound calls.

IV. RECIPROCAL COMPENSATION FOR INTERNET-BOUND TRAFFIC CREATES PERVERSE INCENTIVES AND HARMS ECONOMIC EFFICIENCY

15. Mr. Wood questions several strands of the conclusion in our earlier paper and the Taylor Declaration that reciprocal compensation for Internet-bound traffic using the compensation rate set for local voice traffic can generate perverse incentives for CLEC and ISP behavior that harms economic efficiency. For example, while agreeing that Internet-bound traffic has increased network usage costs, Mr. Wood sees no basis to conclude that "the mismatch

between costs and rates has been created by the involvement of CLECs or has increased in magnitude because of the involvement of CLECs." [Wood Comments, at 18] As he sees it, the extent to which that mismatch between costs and rates (hence, any scope for inefficiency) arises does not depend on whether the Internet-bound traffic originated by the ILEC's subscribers gets handed off to ISPs being served by the ILEC or to other ISPs being served by CLECs. In Mr. Wood's words:

> If the reciprocal compensation rates are properly established at a level equal to the ILEC's forward-looking economic costs of call termination, there is no net cost impact when call termination costs are avoided and replaced by reciprocal compensation. [Wood Comments, at 19]

16. Even if the harms to economic efficiency were to materialize from reciprocal compensation for Internet-bound traffic, Mr. Wood does not believe that the right policy answer is to deny the CLEC compensation for delivering Internet-bound calls received from the ILEC's subscriber to the ISP. [Wood Comments, at 20] The net effect of such a policy, Mr. Wood believes, would not be a reduced mismatch between costs and rates, but simply a migration of ISPs from CLECs to the ILEC that will continue to be compensated from the local rates it charges its subscribers.

17. Mr. Wood also discounts the prospects for diminished incentives for CLECs that receive reciprocal compensation for Internet-bound calls to serve residential local exchange customers. He dismisses the possibility that paying reciprocal compensation to CLECs at rates reflecting the ILEC's incremental cost of call termination could make serving residential local exchange customers less financially appealing. [Wood Comments, at 21]

18. Finally, Mr. Wood rejects fears that uneconomic arbitrage can arise from applying reciprocal compensation to Internet-bound traffic. In his view, such arbitrage "exists only if reciprocal compensation rates have been established at levels that exceed the ILEC's cost of call termination." [Wood Comments, at 22] While conceding that "[c]ost-based rates effectively eliminate [the] incentive" for arbitrage, Mr. Wood asserts that the one example of arbitrage by US LEC of North Carolina is insufficient to merit rejection of reciprocal compensation for Internet-bound traffic.

19. We disagree with all of these conclusions reached by Mr. Wood. As is readily evident from Mr. Wood's discussion of the issues, many of those conclusions stem from assuming that "trading call termination costs for cost-based reciprocal compensation" alters none of the outcomes expected when the ILEC alone serves both the Internet user and the ISP and incurs both call origination and call termination costs. From this, we surmise that Mr. Wood sees the cost of call termination, for Internet-bound traffic, as being the same for both the ILEC and the CLEC.[5]

A. The Mismatch of Rates and Costs Aggravates Economic Inefficiency

20. Economic efficiency (specifically, a form of it called *allocative* efficiency) suffers when incremental revenues (i.e., rates) are out of line with incremental costs. Relative to the economically efficient level, any rate higher than incremental cost encourages excessive supply of the product or service in question, while a rate below incremental cost encourages excessive demand for that product or service. Thus, if the compensation rate available to the ISP-serving CLEC exceeds its incremental cost to deliver Internet-bound traffic to ISPs, we should expect a strong incentive for CLECs to get into the business of serving ISPs, perhaps even specialize in doing so, i.e., at the expense of providing traditional local exchange voice services. Mr. Wood does not address this issue because he fails to recognize or accept that the ISP-specializing CLEC's incremental cost to deliver Internet-bound traffic is likely to be below the compensation rate typically adopted, the *ILEC's* cost to terminate local *voice* calls. Nor does Mr. Wood account for the increasingly familiar situation of highly unbalanced traffic flows between ILECs and CLECs. There is now considerable evidence that the overwhelming percentage of Internet-bound traffic flows occur from ILECs to ISP-serving CLECs, and that CLECs are often formed simply to specialize in serving ISPs[6] and collect reciprocal compensation.[7]

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[5] Mr. Wood repeatedly characterizes the function performed by the ILEC or the CLEC to deliver an Internet-bound call to an ISP as call "termination." We refrain from using the same characterization because, technically, a call can only be terminated to an end-user. As we argued before, ISPs are not end-users, hence CLECs do not terminate Internet-bound calls to them.

[6] According to a recent survey, about 62 percent of national ISPs plan to partner with CLECs, 46 percent plan to merge with CLECs, and nearly 66 percent plan to lease CLEC facilities. See Infonetics Research, "The National (continued...)

21. While Mr. Wood accepts the principle that reciprocal compensation should be cost-based, he clearly errs in designating whose cost should be used for that purpose. The assertion that uneconomic arbitrage could only occur if the compensation rate exceeded the *ILEC's* cost of call termination is false and fails to recognize that it only takes that rate to exceed the *CLEC's* cost of call termination for arbitrage opportunities to be created. Unfortunately, even though arbitrage is typically a rational response to distortions in existing rates and costs, a policy of reciprocal compensation for Internet-bound traffic can only perpetuate—not mitigate—the problem as long as commentators like Mr. Wood fail to make the proper rate-cost comparisons or set compensation rates based on costs of local voice traffic rather than on costs of Internet-bound traffic.

22. As we noted in our earlier paper, evidence that reciprocal compensation payments exceed CLECs' costs of handling Internet-bound traffic could not be more clear. Non-traffic sensitive loop costs and traffic-sensitive costs of telephone companies arise, on average, in about an 80:20 proportion. With reciprocal compensation designed solely to recover the costs of handling Internet-bound traffic, we should expect cost-based reciprocal compensation revenues to average about a quarter of the competitive market-based revenues from supplying local exchange loops. As we noted in our earlier paper, in Louisiana alone, ILECs' (i.e., BellSouth's) reciprocal compensation obligations—ostensibly to recover the traffic sensitive switching and transport costs to terminate traffic—

(...continued)

ISP Opportunity 1998." CLEC and ISP functions are converging as well: new technologies such as softswitches, virtual ISP POPs, and managed port services for ISPs outsource current ISP functions to CLECs, further blurring the distinction between the CLEC and the ISP.

[7] Both the Massachusetts regulators and the FCC have taken note of the web site claims of ISG-Telecom Consultants International, a Florida-based company formed in the aftermath of the Telecommunications Act of 1996 that promises to turn ISPs into CLECs and IXCs with their own ISP operations. As a rationale for doing so, ISG-Telecom believes that "... as a facility based CLEC, the ISP/CLEC should be able to participate in *reciprocal compensation* with the carriers, providing there is not a negative ruling from the FCC in up and coming months." (emphasis added in part) Clearly, arbitrage opportunities presented by the payment of reciprocal compensation for Internet-bound traffic, not an inherently efficient network arrangement, lies at the heart of this mission statement.

were more than three times the CLEC's revenue from non-traffic sensitive local exchange rates.[8]

B. ILEC Compensation of CLECs for Internet-Bound Traffic is Not Economically Efficient

23. While Mr. Wood is certainly correct that CLECs should be compensated for their role in delivering to ISPs Internet-bound calls originated by other carriers, he is mistaken in believing that that compensation should be received from those carriers. To achieve an economically efficient outcome, it is first necessary to view the ILEC and the CLEC as jointly provisioning access to the ISP and, therefore, to the Internet. With this supply arrangement in view, the next step is to require the ISP and the cost-causer, the ISP's customer, to compensate both the ILEC and the CLEC for the costs they incur on their behalf. This is no different from requiring the IXC and the cost-causer, the IXC's customer, to compensate all LECs involved in providing switched access for long distance calls.

24. With ISPs and their customers compensating the ILEC and the CLEC directly, there can be no further reason to maintain an ill-advised reciprocal compensation mechanism for Internet-bound calls between those LECs. Hence, the perverse outcome feared by Mr. Wood—the migration of ISPs from CLECs to the ILEC—can never come to pass. In other words, with the proper cost-causative form of compensation—rather than reciprocal compensation—in place, the form of inefficiency envisioned by Mr. Wood becomes moot.

C. Reciprocal Compensation for Internet-Bound Traffic Creates Opportunities for Arbitrage

25. Mr. Wood's efforts to downplay the significance of arbitrage notwithstanding, it is important to understand just how easily the first-level inefficiency (created by the failure to adopt a cost-causative form of inter-carrier compensation for Internet-bound traffic) can be

[8] "KMC generated approximately $636,427 in revenue from providing service to its ten Louisiana ISP customers during the same time period that it billed BST $2,160,985 in reciprocal compensation for traffic to those ten ISP customers." Louisiana Public Service Commission, Order No. U-23839, *KMC Telecom v. BellSouth Telecommunications, Inc.*, October 13, 1999, Factual Finding No. 13.

compounded by a poorly designed reciprocal compensation rule. The example of US LEC's blatant attempts at arbitrage may be particularly egregious, but it is not the only evidence of opportunistic schemes to make and maximize revenues from reciprocal compensation (see fn. 7).

26. We agree with Mr. Wood that the compounding inefficiency due to reciprocal compensation can be avoided by adopting cost-based compensation rates. However, that is only the minimum requirement. As we stated before, to avoid arbitrage, the compensation rate must reflect a carrier's actual cost to handle Internet-bound, not local voice, traffic. Thus, the ILEC and the CLEC would each be compensated only to recover their respective costs to handle that traffic. This brings up the possibility that the ILEC and the CLEC would have different costs and have to be compensated at different rates, especially if the ILEC provides the full spectrum of local exchange services and the CLEC specializes only in serving ISPs. All of these requirements mark a significant departure from the current practice of (1) extending reciprocal compensation rates set for local voice traffic to Internet-bound traffic as well and (2) charging that rate symmetrically between the ILEC and the CLEC. Mr. Wood fails to acknowledge just how much more is needed to avoid opportunities for arbitrage than merely setting "cost-based compensation rates."

V. CONCLUSION

27. Two conclusions emerge from this discussion. First and foremost, regardless of the level and structure of the costs of transport and termination, cost causation requires that ISPs' customers face directly the costs their usage impose on the network, just as long distance customers pay for those costs directly to the IXC, which then compensates the LECs that jointly facilitate the long distance calls. That same mechanism preserves efficiency incentives for Internet-bound traffic: customers of the ISP pay the ISP for the services they demand, and the ISP reimburses the LECs that jointly carry such traffic. This mechanism—and not reciprocal compensation—applies cost causation and minimizes the efficiency losses from subsidy and other competitive distortions inherent in the ESP exemption.

28. Second, if reciprocal compensation is (incorrectly, in my view) chosen as the inter-carrier compensation mechanism, serious problems must first be addressed. Economic distortions stemming from inefficient subsidies to dial-up Internet-bound traffic, warped incentives in local exchange competition, and profit opportunities from uneconomic arbitrage can only be mitigated if the rate level and structure for reciprocal compensation are made to reflect the actual cost characteristics of Internet-bound traffic and of the ILECs and CLECs that carry it.

BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
RENZ D. JENNINGS
COMMISSIONER

IN THE MATTER OF THE APPLICATION OF SPRINT COMMUNICATIONS COMPANY L.P. FOR ARBITRATION WITH U S WEST COMMUNICATIONS, INC. OF INTERCONNECTION RATES, TERMS AND CONDITIONS PURSUANT TO 47 U.S.C. § 252(b) OF THE TELECOMMUNICATIONS ACT OF 1996.	DOCKET NO. U-2432-96-505 DOCKET NO. E-1051-96-505 DECISION NO. 60010 ORDER

Open Meeting
January 15, 1997
Phoenix, Arizona

BY THE COMMISSION:

On September 23, 1996, Sprint Communications Company L.P. ("Sprint") filed with the Arizona Corporation Commission ("Commission") a Petition for Arbitration of Interconnection Rates, Terms, and Conditions ("Petition") pursuant to 47 U.S.C.§ 252(b) of the Telecommunications Act of 1996 ("Act"). By Procedural Order dated September 26, 1996, an arbitration was scheduled for November 12, 1996, at the Commission's offices in Phoenix. On October 15, 1996, U S WEST Communications, Inc. ("U S WEST") filed its Response to the Petition.

The parties notified the Commission that they had resolved most of the issues regarding interconnection, that a hearing was not necessary, and that the remaining issues would be submitted in briefs for the Commission's determination. On December 16, 1996, Sprint filed its Initial Brief; U S WEST filed its Post-Arbitration Statement; and the parties submitted a joint list of remaining issues.

DISCUSSION

On February 8, 1996, President Clinton signed the Act into law which established new responsibilities for the Federal Communications Commission ("FCC") as well as for the various state

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commissions.[1] On July 2, 1996, the FCC issued *Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-268 ("TNP Order"), which established rules so that a customer who changes his local exchange carrier ("LEC") in the same local service area may keep the same telephone number. On July 22, 1996, the Commission in Decision No. 59761 adopted A.A.C. R14-2-1301 through A.A.C. R14-2-1311 ("Interconnection Rules"), to govern the interconnection of local exchange services between incumbent LECs ("ILECs" or "LECs") and competing LECs ("CLECs"). Also on July 22, 1996, the Commission in Decision No. 59762 adopted A.A.C. R14-2-1501 through A.A.C. R14-2-1507 ("Arbitration and Mediation Rules"), which authorized the Hearing Division to establish procedures and conduct arbitrations. On August 8, 1996, the FCC released *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, FCC 96-325 ("Order") and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, FCC 96-333, in which the FCC adopted initial rules ("Rules") designed to accomplish the goals of the Act.[2]

Pursuant to the Act, telecommunications carriers desiring to interconnect with the facilities and equipment of an ILEC may negotiate the terms of such interconnection directly with the ILEC. If the parties are unsuccessful in negotiating an interconnection agreement, any party to the negotiation may request the Commission to arbitrate any open issues regarding interconnection. The Act requires the Commission to resolve any such issues within 180 days of a telecommunications carrier's initial request to the ILEC for interconnection.

Pursuant to § 252 of the Act, state commissions are required to determine just and reasonable rates for interconnection and network elements based on the cost of providing the interconnection or network element which are nondiscriminatory and may include a reasonable profit. For resale services, rates are to be the wholesale rates based on retail rates excluding costs of marketing, billing, collection

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[1] As part of the Act, the FCC was ordered to issue regulations no later than August 8, 1996 interpreting many of the broad and general terms of the Act.

[2] Except in the section regarding the issue of number portability, any reference to "Para. or ¶" in this Decision is to Paragraphs in the Order.

and other costs avoided by the LEC. The Commission's Interconnection Rules require the use of total service long run incremental costs ("TSLRIC") to determine costs.

Our September 26, 1996 Procedural Order directed the parties to provide by November 5, 1996, a joint pre-arbitration statement which sets forth their positions and the manner in which their disagreement should be resolved by the arbitrators, a proposed interconnection agreement, a list of witnesses and a summary of their testimony, as well as exhibits. The FCC's Rules issued on August 8, 1996, required the use of total element long run incremental costs ("TELRIC"). TELRIC includes the forward-looking costs that can be attributed directly to the provision of services using that element, and includes a reasonable share of the forward-looking joint and common costs.

On September 11, 19996, Sprint filed a request to intervene in the consolidated cost study arbitration scheduled in Docket No. U-3009-96-478, et al., *in the matter of the Petition of American Communications Services, Inc. and American Communications Services of Pima County, Inc. for Arbitration with U S WEST Communications, Inc. of Interconnection Rates, Terms, and Conditions pursuant to 47 U.S.C.§ 252(b) of the Telecommunications Act of 1996.* Sprint's requests was granted by Procedural Order on September 13, 1996.

The cost studies will be used to set prices for all CLECs in U S WEST's service area. [3] Consolidating the cost study review allows input from the initial CLECs and provides for consistency in the Commission's determination of costs. A separate review of the cost studies in each arbitration could result in varying conclusions, depending upon the competitors' resources available to respond to the studies and the capabilities of each party's witness. The CLECs need sufficient time to review and prepare testimony in response to the cost studies, and the Commission needs to have adequate time to review the conclusions reached by the parties.

On September 27, 1996, the United States Court of Appeals for the Eighth Circuit ("Court") issued an Order Setting Hearing and Imposing Temporary Stay. Oral arguments on the motions requesting stay until judicial review of the FCC's Order were held on October 3, 1996, and on October 15, 1996, the Court stayed the operation and effect of the FCC's Rules' "pricing provisions and the 'pick

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[3] According to U S WEST, Sprint has agreed to pay U S WEST's claimed TELRIC rates as interim prices. The rates will be subject to a true-up at the conclusion of the cost studies rulings.

and choose' rule" pending the Court's final determination of the issues raised in the petitions for review.

Pursuant to § 252(b)(4)(C), the Commission hereby resolves the issues presented for arbitration. The issues are listed as they appear in the parties' issue matrix.

1. Most favored nation provision

Sprint's position

§ 252(i) of the Act states as follows:

> A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

The Order, ¶ 1310, which is stayed pending the Court's ruling, indicates that the Act provides for CLECs to elect to accept individual provisions of an ILEC's interconnection agreements with other CLECs related to specific elements, rather than requiring the acceptance of the contract as a whole.

Sprint requested that the Commission interpret § 252(i) of the Act as did the FCC, to allow it to choose to adopt specific provisions among the provisions of U S WEST's interconnection agreements with other CLECs. Sprint stated that this "pick and choose" interpretation is necessary to ensure that new entrants do not receive discriminatory treatment from U S WEST. Otherwise, an onerous term for a service or element which would not be used by the contracting carrier could be placed in the agreement to discourage subsequent carriers from requesting adoption of the agreement.

Sprint indicated that certain types of rates and conditions would be bundled together as provisions which must be adopted in their entirety: those involving cost-based volume discounts, term discounts, variations in operation support interfaces, technical sequential feasibility and geographic deaveraging.

U S WEST's position

U S WEST claimed that the Order and Sprint's interpretation of § 252(i) is contrary to the Act and undermines the Act's focus on the resolution of interconnection issues by negotiation. U S WEST indicated its willingness to make an entire interconnection agreement available on a most favored nation basis to all CLECs, allowing Sprint to operate under the same terms as negotiated with other CLECs.

Commission's resolution

The Court has stayed the FCC's interpretation of the most favorable terms provision, which would

allow a company to pick and choose contract terms among other parties' interconnection agreements, pending resolution of the issue on appeal. § 252(i) requires U S WEST to make available to any other requesting telecommunications carrier any interconnection, service, or network element on the same terms and conditions as those provided in an interconnection agreement. Pending the Court's determination of this issue, the Commission interprets the terms and conditions upon which the interconnection, service or element was offered to be on the same terms and conditions as the entire interconnection agreement. Therefore, at this time, U S WEST is required to offer its entire interconnection agreement to CLECs. The interconnection agreement should indicate that the Court's ruling regarding the most favored nation provision will be incorporated into the interconnection agreement.

The Commission has rendered its Decision regarding the parties to this arbitration proceeding. Nothing in this Decision shall be considered to prejudge the outcome of the Commission's Decision in any other arbitration proceeding regarding the applicability or interpretation of the most favorable terms clause.

2. Combination of unbundled elements

Sprint's position

Sprint opposed any restriction on how it combines unbundled elements or how those elements are used to provide any particular service. Sprint argued that such restrictions would be contrary to § 251(c)(3) of the Act and to 47 C.F.R. § 51.315.

U S WEST's position

U S WEST requested that Sprint be prohibited from purchasing from U S WEST all the elements of a "finished" service and recombining them into the same finished product which Sprint could obtain from U S WEST on a resale basis. U S WEST is concerned that Sprint could avoid the purchase of the retail service pursuant to the Act's resale provisions (i.e. at the retail cost less an avoided cost discount) and instead obtain the same service by purchasing all the unbundled elements of the service at a price based on cost. U S WEST argued that permitting Sprint to rebundle an entire service from unbundled elements it purchases from U S WEST will permit Sprint to arbitrage the price between the resale service and the prices of the unbundled elements. U S WEST recommended that the Commission ignore the

FCC's prohibition on restrictions on combining unbundled elements.

In the alternative, U S WEST proposed that the Commission adopt a temporary residual unbundling charge so that rebundled elements would be priced equivalent to wholesale rates.

Commission's resolution

We reject U S WEST's invitation to ignore the FCC's guidance. The Act establishes U S WEST's affirmative duty to provide unbundled elements "for the provision of a telecommunications service." 47 U.S.C. § 251(c)(3). The Act makes no suggestion that Sprint's right to obtain unbundled elements should in any way be limited. In fact, the Act requires U S WEST to provide unbundled elements in such a way that allows Sprint to provide telecommunications services. U S WEST's provision of requested elements with the limitation requested by U S WEST would contravene that requirement. We will therefore allow Sprint to purchase unbundled elements without restriction as to how those elements may be rebundled, and without any residual unbundling charge.

3. Access revenues/ interim number portability

Sprint's position

Sprint requested that the Commission adopt the FCC's determination of how terminating access revenues should be shared in the context of interim number portability ("INP"), TNP Order ¶ 140.

Sprint requested that the Commission adopt the FCC's conclusion regarding the division of access charges paid by an IXC for termination of a call. As stated in the TNP Order, ¶ 140, a meet-point billing arrangement is the appropriate model to use for INP. Pursuant to such an arrangement, Sprint is requesting that the terminating carrier receive the carrier common line charge, end office charges, transport interconnection charge, and some portion of the tandem-switched transport element. The tandem-switching carrier would receive the balance of the tandem-switched transport element and all of the tandem switching and entrance facility charges.

U S WEST's position

U S WEST requested it receive all local switching and transport charges when forwarding calls. As a compromise, U S WEST proposed to credit Sprint for carrier common line charges.

Commission's resolution

The Commission will adopt the TNP Order ¶ 140 regarding distribution of the terminating

charges. Any inconsistency between our Rules and those of the FCC will be resolved in favor of the FCC's scheme. Our Decision was issued shortly after the TNP Order was released, and the comment period to the TNP Order was still open. R14-2-1308.C indicated that other or additional requirements may be adopted by the Commission. We have decided to adopt the FCC's requirements, in order to arrive at consistency and stability in this issue, which has nationwide scope.

4. Restrictions on resale of business services

Sprint's position

Sprint requested that there be no restrictions on the resale of business services to residential customers. The Act disallows resale restrictions other than authorizing a state commission to "prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers". § 251(c)(4)(B).

The Order, ¶¶ 958-964, prohibits reselling residential services to business customers and lifeline services to ineligible customers, and established a rebuttable presumption that other cross-class reselling restrictions are unreasonable and discriminatory. Sprint stated that U S WEST's claimed lost revenues if business services are resold to residential customers is not a valid reason for the restriction.

U S WEST's position

U S WEST requested that the resale of services be permitted only for their intended or disclosed use, under the same terms and conditions applicable to U S WEST end users, and only to the same class of customers eligible to purchase those services from U S WEST. U S WEST stated that § 251(c)(4)(B) of the Act permits its proposed resale restriction, and the restriction is reasonable to prevent rate arbitrage through the avoidance of access charges.

Commission's resolution

While some restriction on the resale of business services, such as Centrex/Centron, to residential customers is appropriate, U S WEST's proposed restriction is too broad. Sprint should be restricted to selling business services to those customers eligible for the services pursuant to U S WEST's tariff.

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5. Performance measures and penalties

Sprint's position

Sprint proposed that U S WEST should provide statistical process measurements to show conformance with specified service quality standards, and to provide refunds for noncompliance.

U S WEST's position

U S WEST proposed that the standard be nondiscrimination in overall service quality; that the same level of service be provided to Sprint as it provides to itself and its customers. U S WEST proposed a list of nine service measurements it is willing to take to confirm that service provided is nondiscriminatory.

Commission's resolution

We adopt, in the interim, the measurements proposed by U S WEST, as well as a measurement of the provision of dedicated access services, as the proper measurement on which to gauge U S WEST's performance. We find that pursuant to the Act, the proper standard of performance for each of those measurements should be the quality of service which U S WEST provides to itself, to its ten larg customers, to independent LECs, to other CLECs, or other quality of service requirements imposed by the Commission, whichever is higher. In addition, a generic proceeding to determine permanent quality of service measurements/liquidated damages is set for February 27, 1997.

At this time, we will not require that the agreement include automatic penalties or refunds for a party's failure to comply with performance standards. The FCC declined to establish performance penalties. ¶¶ 307-311. Instead, the FCC stated that an aggrieved party may file a section 208 complaint with the FCC and that the FCC will initiate a proceeding to develop expedited procedures to handle section 208 complaints. In addition, a carrier could file a section 207 complaint seeking the recovery of damages. ¶¶ 126-129. We will not establish performance penalties where the FCC declined to do so, and where other procedures exist to remedy failures to comply with performance standards.

The Commission has rendered its Decision regarding the parties to this arbitration proceeding. Nothing in this Decision shall be considered to prejudge the outcome of the Commission's Decision in any other arbitration proceeding regarding U S WEST's performance standards or the applicabili penalties or refunds.

The parties will be instructed to prepare for the Commission's review a signed interconnection agreement incorporating in its terms the issues resolved by arbitration.

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Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On September 11, 1996, Sprint filed a request to intervene in the consolidated cost study arbitration scheduled in Docket No. U-3009-96-498, et al.

2. By Procedural Order on September 13, 1996, Sprint's request to intervene was granted.

3. On September 18, 1996, Sprint filed an application for an extension of its Certificate, to provide local exchange and exchange access service, in Docket No. 2432-96-501.

4. U S WEST is certificated to provide local exchange and intraLATA telecommunications services to the public in Arizona, pursuant to Article 15 of the Arizona Constitution.

5. On September 23, 1996, Sprint filed with the Commission a Petition pursuant to the Act.

6. By Procedural Order dated September 26, 1996, an arbitration was scheduled for November 12, 1996, at the Commission's offices in Phoenix.

7. On October 15, 1996, U S WEST filed its Response to the Petition.

8. The parties reached an agreement on the majority of the issues, and elected to present the remaining issues to the Commission in brief format, rather than at an arbitration hearing.

9. On December 16, 1996, Sprint filed its Initial Brief, U S WEST filed a Post-Arbitration Statement, and the parties submitted a Joint List of Issues, which summarized the issues still unresolved and presented each party's proposed resolution of the issues.

10. The Commission has analyzed the issues as presented by parties and has resolved the issues as stated in the Discussion above.

11. The Commission hereby adopts the Discussion and incorporates the parties' positions and the Commission's resolution of the issues herein.

12. Pursuant to A.A.C. R14-2-1506.A, the parties will be ordered to prepare and sign an interconnection agreement incorporating the issues as resolved by the Commission, for review by the

Commission pursuant to the Act, within thirty days from the date of this Decision.

CONCLUSIONS OF LAW

1. U S WEST is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-246 and 40-247.

2. U S WEST is an ILEC within the meaning of 47 U.S.C. § 252.

3. Sprint is a public service corporation within the meaning of Article XV of the Arizona Constitution.

4. Sprint is a telecommunications carrier within the meaning of 47 U.S.C. § 252.

5. The Commission has jurisdiction over Sprint and U S WEST and of the subject matter of the Petition.

6. The Commission's resolution of the issues pending herein is just and reasonable, consistent with the Act, the FCC Rules and Order, and the Interconnection Rules, and in the public interest.

ORDER

IT IS THEREFORE ORDERED that the Commission hereby adopts and incorporates as its Order the resolution of the issues contained in the above Discussion.

IT IS FURTHER ORDERED that Sprint Communications Company L.P. and U S WEST Communications, Inc. shall prepare and sign an interconnection agreement incorporating the terms of the Commission's resolutions.

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IT IS FURTHER ORDERED that the signed interconnection agreement shall be submitted to the Commission for its review within thirty days of the date of this Decision.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, JAMES MATTHEWS, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 21 day of January, 1997.

James Matthews
JAMES MATTHEWS
EXECUTIVE SECRETARY

DISSENT _____
BMB:kjd

Decision No. C00-479

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 00B-011T

IN THE MATTER OF THE PETITION OF SPRINT COMMUNICATIONS COMPANY, L.P. FOR ARBITRATION PURSUANT TO U.S. CODE § 252(B) OF THE TELECOMMUNICATIONS ACT OF 1996 TO ESTABLISH AN INTERCONNECTION AGREEMENT WITH U S WEST COMMUNICATIONS, INC.

INITIAL COMMISSION DECISION

Mailed Date: May 5, 2000
Adopted Date: May 3, 2000

Appearances:

Steve Kukta, Esq., Kansas City, Missouri, *Pro Hac Vice*, and Andrew Jones, Esq., Kansas City, Missouri, *Pro Hac Vice*, for Sprint Communications Company, L.P.; and

John M. Devaney, Esq., Washington, D.C., *Pro Hac Vice*, and John L. Munn, Esq., Denver, Colorado, for U S WEST Communications, Inc.

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I. BY THE COMMISSION

A. Statement

1. Sprint Communications Company, L.P. ("Sprint") initiated this proceeding by filing a Petition for Arbitration on January 12, 2000. Sprint requests that the Commission arbitrate certain terms, conditions, and prices for interconnections and related arrangements with U S WEST Communications, Inc. ("U S WEST"), pursuant to 47 U.S.C. § 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("1996 Act"). U S WEST filed its Response on February 7, 2000. New Edge Networks, Inc., and Advanced TelCom Group, Inc filed petitions to intervene. Those petitions were denied by the Commission in Decision No. C00-173, February 24, 2000.

2. The Commission assigned an Administrative Law Judge ("ALJ") to hear the matter. The ALJ established a procedural schedule which called for the matter to be heard on April 11 and 12, 2000 in Denver, Colorado. Under the 1996 Act, the Commission's decision is due May 5, 2000. Because of this time constraint, the Commission finds that due and timely execution of its functions imperatively and unavoidably require

that the recommended decision of the ALJ be omitted and that the Commission make the initial decision in this proceeding.

3. At the assigned place and time, the ALJ called the matter for hearing. As a preliminary matter, he granted admission pro hac vice to Steven Kukta and Andrew Jones to represent Sprint and John Devaney to represent U S WEST.

4. After negotiation, four items remained to be arbitrated by the Commission. The first, reciprocal compensation, was addressed at hearing. The remaining three issues, issues nos. 2, 3, and 10 from the issues matrix, involved matters concerning unbundled network elements ("UNEs"). By agreement of the parties, the UNE issues will be determined on the basis of the written submissions including testimony admitted by stipulation.

5. The matter then proceeded to hearing. Exhibits 1 through 10 and 12 through 15 were identified, offered, and admitted into evidence. Exhibit 11 was identified, offered, and then withdrawn. At the conclusion of the hearing, the parties were authorized to file posthearing statements of position no later than April 20, 2000. Both Sprint and U S WEST filed timely statements of position..

B. Findings of Fact

1. Reciprocal Compensation for ISP-Bound Traffic

a. This issue involves compensation for traffic that originates on the network of one local exchange carrier ("LEC") and is delivered over the network of another LEC to an Internet service provider ("ISP"). The ISP then provides services by transmitting the data to and from the Internet. The Federal Communications Commission ("FCC") has indicated that State commissions may determine, compensation between carriers for this type of traffic under § 252 of the 1996 Act. *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Declaratory Ruling in CC Docket 99-68, 14 FCC Rcd 3689 ¶¶ 25-27 (Feb. 26, 1999) ("Declaratory Ruling"). The FCC had determined that Internet calling is interstate in nature for jurisdictional purposes. *Id.* at ¶ 12. However, the decision of the FCC has been vacated by the U.S. Court of Appeals. *Bell Atlantic Telephone Co. v. F.C.C.*, 206 F.3d 1 (D.C. Cir. 2000). Despite this vacating of the FCC decision, the parties to this proceeding agree that this Commission has the authority to set a compensation rate for ISP-bound traffic.

b. According to U S WEST, § 251(b)(5) allows reciprocal compensation for local traffic only. U S WEST argues

that ISP traffic is interstate, not local, in nature; therefore, this traffic is not subject to reciprocal compensation under the Act.

c. U S WEST correctly notes that the FCC has ruled that ISP traffic is primarily interstate in nature. In the Declaratory Ruling, the FCC held that, notwithstanding the interstate nature of ISP calls, state commissions may still mandate reciprocal compensation for this traffic in § 252 arbitrations. Declaratory Ruling, ¶¶ 25-27. By the same token, the FCC determined, state commissions "are free not to require the payment of reciprocal compensation for this traffic and to adopt another compensation mechanism." Declaratory Ruling, ¶ 26.

d. In *Bell Atlantic,* the D.C. Circuit vacated the FCC's holding that ISP traffic is not local, but interstate in nature. The court ruled that the FCC failed satisfactorily to explain its reasons for concluding that delivery of calls to ISPs does not constitute termination of local telecommunications traffic under the Act. Although the court vacated the Declaratory Ruling to the extent it found ISP calls to be interstate in nature, the court did not address the FCC's holding that state commissions are authorized to determine the intercarrier compensation mechanism for such traffic in § 252 proceedings. See *Bell Atlantic,* 206 F. 3d at 9.

2. Sprint's Position

a. Sprint argues for compensation at the local end-office termination rate, which is $0.00283 per minute. It notes that it incurs costs to provide the service, and without some compensation from U S WEST those costs will go unrecovered. This will keep it from competing for this type of local traffic, and is thus anticompetitive. Inasmuch as the compensation is reciprocal, U S WEST would be compensated for traffic which originates on Sprint's network and terminates at an ISP served by U S WEST. Sprint also rejects the notion of singling out Internet traffic because there are many types of local traffic that exhibit similar characteristics which are not singled out. Sprint points to such examples as telecommuters who log onto a local area network ("LAN") for an extended period of time, radio talk show call in numbers, and governmental help lines.

b. Sprint concedes that its cost structure will be different from U S WEST's since its network structure is different. It argues that a competitive local exchange carrier ("CLEC") such as Sprint will have lower call volumes at the beginning and hence a higher per unit cost than an incumbent local exchange carrier ("ILEC") such as U S WEST. Sprint concedes that with state-of-the-art technology it will likely be able to build a network without deploying as many switches as an

ILEC. It seeks to have the local end-office termination rate utilized for the reciprocal compensation rate.

c. Sprint claims that Internet traffic cannot currently be distinguished from other categories of telephone calls. It suggests that, at present, attempting to separately identify and measure ISP-bound traffic will be of little value and expensive.

d. Sprint notes that the Commission in prior cases has ordered termination compensation for other CLECs for ISP traffic, and argues that failure to take the same action here would constitute unlawful discrimination. Sprint primarily points to the ICG complaint case[1] in which we directed U S WEST to pay termination compensation to ICG for ISP calls.[2]

3. U S WEST's Position

a. U S WEST opposes the payment of reciprocal compensation for ISP traffic. In U S WEST's view, ISP traffic is not local but is analogous to long distance traffic. U S WEST suggests that the FCC's Declaratory Ruling finding Internet traffic to be substantially interstate in nature was unaffected by the Court of Appeals' vacating of the that order. It further analogizes ISP-bound traffic to paging traffic. It notes that

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[1] *ICG Telecom Group, Inc. v. U S WEST Communications, Inc.*, Docket No. 98F-299T.

this Commission has previously held that reciprocal compensation makes little or no sense when traffic is strictly one-way.

b. U S WEST views the cost-causer as the ISP, not the party originating the Internet call. It notes the different characteristics of Internet calls from other local calls: the calls last several times longer than voice calls and the calls are one-way because ISP modems do not call out. U S WEST notes that at the current local end-office termination rate of $0.00283 per minute, one hour of Internet usage by one customer each day for a month would result in $5.10 per month of compensation at the existing voice rate. U S WEST suggests this is clearly excessive given that it receives only about $15 per month for providing local exchange service.

c. U S WEST claims that the proper analysis is to view Internet calls (calls to ISPs) using a long distance paradigm rather than a local paradigm. In U S WEST's view, an ISP is more like an interexchange carrier ("IXC"). While an IXC connects a local customer to someone in a different exchange area for a voice call, an ISP connects a local customer's computer to a computer which may be located anywhere in the world. The IXC arranges all the intermediate steps and pays

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The other case Sprint relies on is the MFS/ U S WEST arbitration, Docket No. 96A-287T. *See* Decision Nos. C96-1185 (Mailed Date of November 8, 1996), page 30.

whatever it has to, to complete the call, charging only the end user. When there are several carriers carrying an interexchange call for the IXC, they all split the revenue. U S WEST suggests that a similar approach is more appropriate for ISP traffic. It notes that the traffic would not be present but for the ISP. The ISP receives compensation from the end user, its customer. In U S WEST's view the ISP should be compensating the carriers that bring calls to the ISP, just as the ISP compensates the providers that take the call out on the Internet.

d. Because the FCC exempts ISPs from paying access charges, U S WEST argues that the next best approach is for the CLEC to share some of the revenues it receives from the ISP with the ILEC in proportion to the relative costs which the ILEC and CLEC incur. This approach addresses the situation in which the call originates on the ILEC's network and is then transferred to the CLEC's network for the purpose of connecting with the customer's ISP. As a third-best, interim solution, U S WEST recommends bill and keep where ISP traffic is exchanged between the ILEC and the CLEC but without any exchange of compensation.

e. In the alternative, should this Commission determine that some compensation should be paid to a CLEC for calls originating on an ILEC's network destined to an ISP on a CLEC's network, U S WEST suggests that the local end-office

termination rate which is contained in its tariffs for voice traffic is too high. U S WEST argues that the voice rate set by this Commission is not reflective of costs for a data network such as Sprint would provide in the future. Sprint's costs would be lower. It also argues that the rate component that recovers the fixed cost of a voice call (call set up) was designed to recover that cost over a shorter period of time typical of a voice call. Thus, the longer Internet calls would over-recover fixed costs.

f. U S WEST finally suggests that reciprocal compensation will cause an over-investment in facilities to serve dial up modems of ISPs. It will also cause a subsidy to flow to those users. In U S WEST's view, reciprocal compensation will inevitably create upward pressure on basic local exchange rates.

C. Commission Decision.

a. We disagree with Sprint's argument that failure to order reciprocal compensation here would be discriminatory in light of the ICG ruling. We likewise disagree that ICG has any preclusive or precedential value here. In the ICG proceeding, we concluded that the existing ICG/U S WEST agreement provided for termination compensation for ISP traffic. *See* Decision No. C99-898, page 6. While we observed (Decision No. C99-898, pages 6-9) that certain policy considerations

suggested that termination compensation should be paid for ISP calls (e.g. because ISP traffic is exempt from access charges, ICG could not recover its ISP-related costs for terminating those calls without reciprocal compensation), those observations were based upon the record in that case. The ICG/U S WEST dispute came before the Commission on cross-motions for summary judgment. The economic analysis present in this record was not present in the ICG proceeding.

b. Moreover, public policy concerns were not the deciding factors in the ICG proceeding. That case concerned interpretation of an existing interconnection agreement, not arbitration of terms that should be included in such an agreement. We based our directive that U S WEST pay termination compensation to ICG for ISP calls on the existing ICG/U S WEST interconnection agreement's provision for such compensation. *See* Decision No. C99-898, page 6. Notably, we specifically stated that we might revisit this issue (i.e. the payment of termination compensation for ISP traffic) in future arbitration proceedings:

> Given reasonable expectations by ICG that its existing interconnection agreement provided for reciprocal compensation for ISP traffic (above), it is reasonable to order U S WEST to pay compensation at this time. This arrangement may change in the future depending on the FCC's pending rulemaking on this matter, or depending on future § 252 proceedings before this Commission. Whether the continued allowance of reciprocal compensation for ISP-traffic provides

> 'perverse' economic incentives may be more fully considered at that time for purposes of future interconnection agreement. (footnotes omitted)

(emphasis added) Decision No. C99-898, pages 9-10.

c. The point is that our prior orders mandating reciprocal compensation for ISP calls-Sprint mentions two, the ICG case and the MFS/U S WEST arbitration discussed in the ICG ruling were from the first round of § 252 arbitrations before the Commission in 1996 and early 1997. Here, U S WEST correctly observes that in those prior proceedings no one, including the Commission, appreciated the economic ramifications of ordering termination compensation for ISP traffic. For example, the information presented in this case relating to the substantial and growing volume of ISP traffic and the imbalance of that traffic on U S WEST's network as compared to CLECs' networks was not available at that time.

d. The present case is the first fully litigated § 252 proceeding after the first round of arbitrations to present the question relating to termination compensation for ISP calls. It is appropriate for the Commission to reconsider, in light of the evidence and argument presented here, whether termination compensation should continue to be paid for calls to the Internet. Our present decision not to require termination compensation for ISP traffic does not discriminate against Sprint. Past interconnection agreements (i.e. the MFS/U S WEST

and ICG/U S WEST agreements) were based upon circumstances existing at that time, and we note that those agreements have expired or will shortly expire. Therefore, the present ruling is not unlawfully discriminatory as compared to past decisions by the Commission.[3] As for future interconnection agreements, whether U S WEST will be ordered to pay termination compensation to other CLECs for ISP traffic will, of course, be decided based upon the evidence and argument presented in those cases. If our future decisions on this issue differ from the present one, Sprint may exercise its rights under § 252(i) of the Act to opt into those provisions.

e. The relevant situation is as follows: An end-user, a local exchange customer of U S WEST is a customer of an ISP, which is, in-turn, a local exchange customer of Sprint. When this end-user initiates Internet-bound traffic, the call is transmitted from U S WEST to Sprint, from Sprint to the ISP, and from the ISP to the Internet. Both U S WEST and Sprint incur costs during this process. The Commission must determine, as part of the interconnection agreement between U S WEST and Sprint, how these costs will be recovered.

f. Both parties present scenarios which they

[3] A contrary holding that we are bound by the mistakes of past arbitrations is belied by the fact the these agreements are for a limited duration.

contend are analogous to the situation described above. U S WEST offers as an analogy the ILEC-IXC interconnection for the purpose of transmitting an interstate call. In this model, the originator of the call is primarily the customer of the IXC and the IXC charges the customer for the call. The IXC then turns around and compensates the LECs, which originate and terminate the call. In the situation of interest here, U S WEST argues that the ISP plays a role analogous to that of the IXC. Sprint, on the other hand, favors an analogy involving ILEC-CLEC interconnection for the purpose of transmitting a local call. The originator of the call in this analogy is a customer of the ILEC and the ILEC charges the customer for the call. The ILEC then compensates the CLEC for the costs it incurs in terminating the call. Articulating the parties' positions more succinctly, U S WEST contends that the Internet-bound traffic being considered here is an interstate call, whereas Sprint believes it to be a local call.

g. The Commission finds that U S WEST's analogy is the more reasonable. Given that most Internet calls end at locations out of state, it appears that such calls are primarily interstate in nature. We view the originator of the Internet-bound call as acting primarily as a customer of the ISP, not as a customer of U S WEST. Both U S WEST and Sprint are providing access-like functions to transmit the call to the Internet,

similar to what their role would be in providing access to an IXC to transmit an interstate call. Furthermore, the remote hubs to which Internet-bound traffic is directed are often outside the state in which the call originated. Beyond that, the ultimate destination of these calls is some web site, which is generally in another state or even another country.

h. The ILEC-IXC interconnection analogy suggests that the ISP should compensate both U S WEST and Sprint for the costs they incur in transmitting this call. Even if that analogy were not employed, applying the principle of cost causation would lead to the same conclusion, namely, that the ISP should pay access charges to both U S WEST and Sprint for the cost caused by the ISP customer. The ISP would recover these charges from that customer. This option, however, is precluded by the FCC's access charge exemption for ISPs.[4] Therefore, both U S WEST and Sprint are in the position of having to recover the costs of carrying this Internet-bound traffic through some means other than access charges.

i. Sprint recommends that cost recovery be done through the process of reciprocal compensation. In the scenario being considered here, since the end-user originating the

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[4] By granting this exemption, the FCC has given the ISPs a valuable property right. The importance of clearly defining property rights was analyzed in a path-breaking article by R. H. Coase ("The Problem of Social Costs," Journal of Law and Economics, Vol. 3, 1960, pp. 1-44).

Internet-bound call is a local exchange customer of U S WEST, U S WEST would have to compensate Sprint for the latter's costs incurred in transmitting the call to the ISP. The Commission rejects the use of reciprocal compensation with a positive rate in this instance.

j. While ISP calls appear to be interstate in nature, our conclusion is not necessarily based upon that determination. Even if this traffic were considered to be local in nature, the Commission still would not embrace reciprocal compensation with a positive rate. Such a scheme would, in our view, bestow upon Sprint an unwarranted property right, the exercise of which would result in decidedly one-sided compensation. In addition, we find that reciprocal compensation would introduce a series of unwanted distortions into the market. These include: (1) cross-subsidization of CLECs, ISPs, and Internet users by the ILEC's customers who do not use the Internet; (2) excessive use of the Internet; (3) excessive entry into the market by CLECs specializing in ISP traffic mainly for the purpose of receiving compensation from the ILECs;[5] and (4) disincentives for CLECs to offer either residential service or

[5] The North Carolina Commission recently put an end to a "sham CLEC" operation that underscores the profitable arbitrage possibilities created by ordering reciprocal compensation. *See In the Matter of Bell South Communications, Inc. v. US LEC,* Docket P-561, sub 10, Order Denying Reciprocal Compensation (N.C. P.U.C. March 31, 2000).

advanced services themselves. In short, we agree with U S WEST that reciprocal compensation for ISP traffic would not improve overall social welfare; it would simply promote the welfare of some at the expense of others. See, *Complaint of MCI Worldcom, Inc against New England Telephone and Telegraph Co.,* D.T.E. 97-116-C Order (Mass. Dept. of Telecommunications and Energy May 1999) ("[T]he benefits gained through this regulatory distortion by CLECs, ISPs and their customers do not make society as a whole better off, because they come artificially at the expense of others.").

k. U S WEST suggests that, because the ISP cannot be required to pay access charges, a second-best solution would be for Sprint to share the revenues it obtains from the ISP with U S WEST, in proportion to Sprint's and U S WEST's relative costs incurred in transmitting this call. The Commission rejects this suggestion as well. We agree with Sprint that this is the equivalent of imposing access charges on the ISP, an option which is precluded by the FCC exemption.

l. The only remaining suggestion offered by either party is the application of bill and keep, whereby, in effect, Internet-bound traffic would be transmitted between U S WEST to Sprint without monetary compensation flowing in either direction. This possibility is offered by U S WEST as its third-best alternative. The Commission finds that bill and keep

should be adopted here to deal with ISP traffic. Notably, bill and keep avoids the problems found with the other proposed solutions, as stated above. In particular, it treats U S WEST and Sprint symmetrically. Moreover, the Commission believes that a bill and keep approach is appropriate because it emphasizes the need for various networks to interconnect and for carriers to recover their costs from charges imposed upon their own customers.[6]

m. In adopting bill and keep, the Commission believes that U S WEST will be able to differentiate ISP traffic from the traffic between U S WEST and Sprint that is subject to reciprocal compensation. Such differentiation is necessary because the two types of traffic will be treated differently. The procedure for differentiating the two was explained by witnesses for U S WEST, and we find this method to be reasonably designed to measure ISP traffic.[7]

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[6] As we move forward, correctly, to the consideration of globally connected communications networks, we need to abandon the archaic approaches to service categorization and regulatory jurisdiction. Regardless of technology or purpose, universal access to equitable connections should be the goal. Whether a call is local, interstate, voice, data, wireless, internet or wireline should not be a determining factor in how the activity is regulated, priced or compensated.

[7] We have concluded that Sprint is not entitled to reciprocal compensation for ISP-bound traffic for the reasons stated above. Notwithstanding the D. C. Circuit's vacation and remand of the Declaratory Ruling, we believe that the FCC correctly concluded that ISP-bound traffic is interstate and thus not "local telecommunications traffic". The FCC's conclusion, though wanting in explanation, is ultimately vindicated by an economic analysis of ISP traffic. In addition, even if ISP traffic were determined to be local, the policy and economic considerations discussed above indicate that it should not be subject to reciprocal compensation.

1. UNE Issues

a. Issues nos. 2, 3, and 10 submitted for arbitration relate to UNEs. Issues nos. 2 and 3 involve the question to what extent U S WEST is required to combine UNEs at the request of Sprint. Sprint suggests that U S WEST be obligated to combine UNEs in any manner in which UNEs are ordinarily combined within U S WEST's network, provided that such combination is technically feasible and would not impair the ability of other carriers to obtain access to UNEs or to interconnect with U S WEST's network. U S WEST argues that it should not be required to combine UNEs unless the UNE combination is pre-existing or already combined for the particular customer Sprint seeks to serve.

b. Issue no. 10 involves nonrecurring charges for the provision of UNE combinations. Sprint contends that U S WEST is not entitled to a nonrecurring charge for each and every element included in a pre-existing UNE combination. U S WEST on the other hand suggests that it is entitled to recover all nonrecurring charges for each UNE whether the UNE combination already exists or the UNE combination is new. Neither party has explicitly set forth specific nonrecurring charges for UNEs and for UNE combinations.

Hopefully the FCC will consider these factors in future proceedings on this issue.

c. The Commission has previously ruled upon the issue regarding U S WEST's obligation to combine UNEs requested by CLECs.[8] We have determined that U S WEST should be required to combine UNEs for CLECs in the same manner that it normally combines them for itself. *See* Decision No. C98-1047. The same result should occur here. We accept Sprint's position and will require U S WEST to combine UNEs in any manner in which UNEs are ordinarily combined within U S WEST's network. U S WEST's position on provision of UNE combinations being limited to those UNEs that are already combined or pre-existing is rejected.

d. This requirement is consistent with the currently effective FCC rule (47 C.F.R. 51.315(b)) regarding combinations of UNEs. Furthermore, we agree with Sprint that its ability to compete in the local exchange market would be impaired under U S WEST's proposal. Therefore, the interconnection agreement between Sprint and U S WEST will require U S WEST to combine UNEs for Sprint in any manner in which they are ordinarily combined within U S WEST's network

e. This Commission has previously addressed the nonrecurring charge for provision of pre-existing UNE

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[8] To the extent U S WEST asserts that our authority to order combinations of network elements is limited because FCC Rules 47 C.F.R. 51.315(c-f) were vacated by the Eighth Circuit Court of Appeals, Iowa Utilities Board v. FCC, 120 F. Ed 753 (8th Cir. 1997), we disagree. We affirm our prior ruling in Decision No. C98-267 that the Commission possesses independent authority under State law to order combinations of network elements.

combinations in the context of the interconnection tariffs of U S WEST. See Commission Decision Nos. C97-739, C97-946, C98-1047 and C98-1250. When the Commission established the interconnection rates, it adjusted the nonrecurring charges to consider bundling. We find U S WEST is entitled to recover all nonrecurring charges as set out in its interconnection tariffs.

II. ORDER

A. The Commission Orders That:

1. The issues presented in the Petition for Arbitration filed by Sprint Communications Company, L.P. on January 12, 2000 are resolved as set forth in the above discussion.

2. Within 30 days of the final Commission decision in this docket, Sprint Communications Company, L.P. and U S WEST Communications, Inc. shall submit a complete proposed interconnection agreement for approval or rejection by the Commission, pursuant to the provisions of 47 U.S.C. § 252(e) of the Telecommunications Act of 1996.

3. The Motion for Leave to File Motion to Strike and Response to Sprint's Late-Filed Notice of Decision submitted by U S WEST Communications, Inc. on May 3, 2000 is granted. Response time to the motion is waived.

4. The Motion to Strike Sprint's Late-Filed Notice of Decision submitted by U S WEST Communications, Inc. on May 3, 2000 is granted. Response time to the motion is waived.

5. The twenty-day period provided for in § 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this decision.

6. This Order is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING May 3, 2000.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners

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